

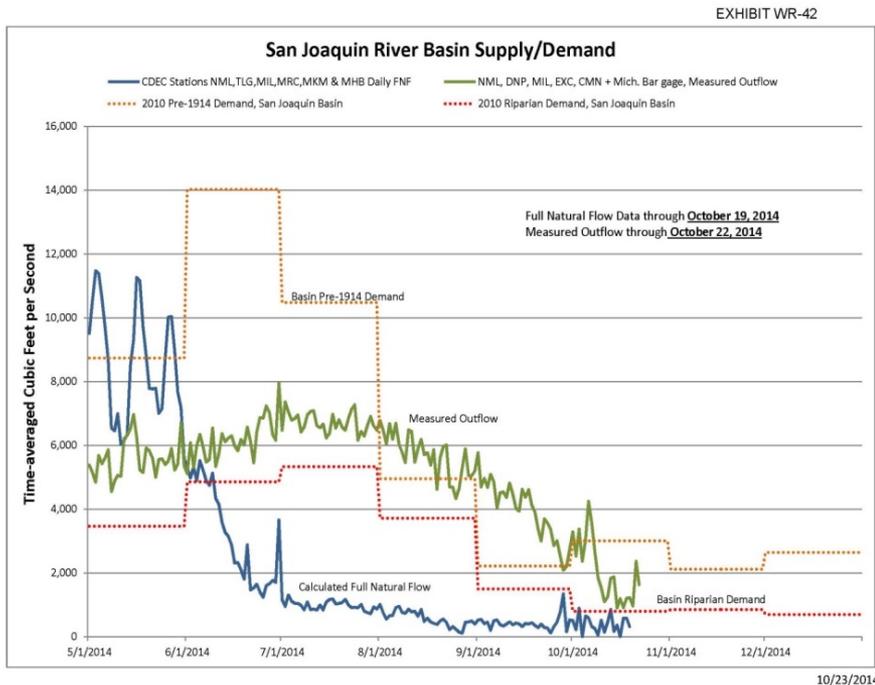
# G. SCOTT FAHEY AND SUGAR PINE SPRING WATER LP – ADMINISTRATIVE CIVIL LIABILITY (ACL) CEASE AND DESIST ORDER (CDO) HEARING

## JANUARY 25-26, 2016 OPENING STATEMENT

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State Water Resources Control Board,  
Office of Enforcement*

*Attorney for the Prosecution Team  
PT EXHIBIT WR-*

# California's Drought



Supply & Demand Analysis,  
San Joaquin River Basin, 2014

- Severe four-year drought
- Governor declared a drought and state of emergency in 2014 and again in 2015
- SWRCB assessed water supply and demand
- May 2014 - water unavailable for post-1914 rights
- April 2015 - water unavailable for post-1914 rights and some pre-1914 rights

# Fahey's Water Rights

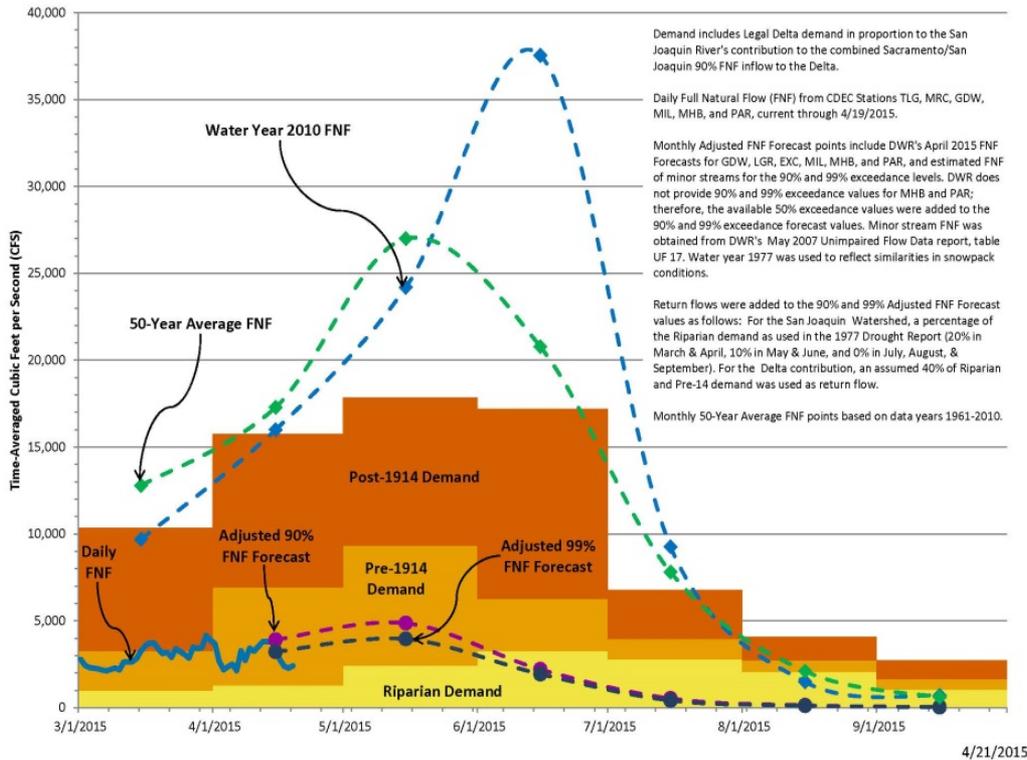


- Two post-1914 permits for diversion from four springs
- Springs tributary to Tuolumne River upstream of New Don Pedro
- Pipes water to facility
- Water sold to bottled water companies

# No Water For Fahey During Drought

2015 San Joaquin River Basin Supply/Demand

EXHIBIT WR-43



Supply & Demand Analysis,  
San Joaquin River Basin, 2015

- Insufficient supply to support Fahey's junior rights during both 2014, and 2015
- Fahey notified of insufficient supply during both 2014, and 2015.
- Fahey continued to divert and sell water for bottling, despite notification.

# Evidence Shows Fahey Continued Diverting Water



Two tankers entering Fahey's facility -  
July 14, 2015 at 6:40 AM

Evidence from:

- Admissions
- Progress reports
- Surveillance
- Invoices submitted in response to the information order

# Fahey Continued Diverting Water

- No alternative or supplemental right
- No alternative supply
- Permit terms apply unless and until changed



Second truck leaving Fahey's facility -  
July 14, 2015 at 7:26 A.M.

# Fahey's Unauthorized Diversion Subjects him to Civil Liability

Water Code § 1052:

- Unauthorized diversion of water is a trespass (subd. (a))
- Liability for unauthorized diversion during drought up to \$1,000 per day and \$2,500 per acre-foot (subd. (c))
- SWRCB may administratively impose liability (subd. (d)(2))

# Maximum Administrative Civil Liability

Calculation of Maximum Penalty for Unauthorized Diversion	2014	2015
Days of Diversion	123	90
Penalty per Day for Unauthorized Diversion	\$1,000	\$1,000
Penalty per Permit	\$123,000	\$90,000
Permits	2	2
<b>Penalty for the Number of Days of Unauthorized Diversion - Both Permits</b>	<b>\$246,000</b>	<b>\$180,000</b>
Reported or Observed Loads of Water	456	359
Average # of Gallons/Load	6600	6600
Calculated # of Gallons Diverted	3009600	2369400
Gallons/Acre-foot	325900	325900
Amount of Water Diverted (Acre-feet)	9.23	7.27
Penalty per Acre-foot of Unauthorized Diversion	\$2,500	\$2,500
<b>Penalty Based upon the Amount of Water Taken by Unauthorized Diversion</b>	<b>\$23,087</b>	<b>\$18,163</b>
<b>Maximum Penalty for Unauthorized Diversion in Each Year</b>	<b>\$269,087</b>	<b>\$198,163</b>
<b>Maximum Penalty for Unauthorized Diversion in 2014 and 2015</b>	<b>\$467,250</b>	

# ACL Penalty Considerations

Under Water Code § 1055.3, the State Water Board must consider all relevant factors, including, but not limited to –

- The extent of harm caused by the violation;
- The nature and persistence of the violation;
- The length of time over which the violation occurs; and
- The corrective action, if any, taken by the violator

# Cease and Desist Order Necessary

Under Water Code § 1831, the State Water Board may issue a CDO in response to a violation or threatened violation of the prohibition in section 1052 against unauthorized diversion.

- Mr. Fahey diverted and used water during a drought without authorization.
- Did not stop diverting.
- Stated he would not stop diverting.
- Evidence of prior permit violations.

# Prosecution Team

**Katherine Mrowka**

**Brian Coats**

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**Sam Cole**